

Remarks

This Amendment After Final is in response to the Final Office Action dated **June 13, 2007**. In the Final Office Action, claims 1-9, 12-15 were rejected under 35 USC 102 as being anticipated by Keith et al. (US 5,702,439) and claims 10-11 were objected to as being dependent upon a rejected base claim.

The following comments are presented in the same order, with section headings, as the Final Office Action.

Election/Restrictions

The Final Office Action states:

This application contains claim 16 drawn to an invention non-elected *without traverse* in the reply filed on 09/01/06. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01. (emphasis added)

Applicant notes that MPEP 821.01 is in reference to After Election *With Traverse* and CFR 1.144 is in regard to Petition from Requirement for Restriction. Applicant asserts that the status identifier of “withdrawn” is appropriate at this time and that cancellation of claim 16 is inappropriate at this time. MPEP 714 states in part:

For any amendment being filed in response to a restriction or election of species requirement and any subsequent amendment, *any claims which are non-elected must have the status identifier (withdrawn)*. (emphasis added).

MPEP 821.02, entitled After Election *Without Traverse*, states in part:

Under these circumstances, when the application is otherwise

ready for allowance, the claims to the nonelected invention, except for claims directed to nonelected species and nonelected inventions eligible for rejoinder, may be canceled by an examiner's amendment, and the application passed to issue.

Applicant requests that claim 16 be maintained in withdrawn form until the application is in condition for allowance.

35 USC 102

In the Final Office Action, claims 1-9, 12-15 were rejected under 35 USC 102 as being anticipated by Keith et al. (US 5,702,439).

The Final Office Action stated that claims 10 and 11 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. To further prosecution, claim 1 has been amended by reciting the elements of independent claims 9 and 10 and new independent claim 17 recites the elements of claims 1, 9 and 11. Because claim 12 depended upon claim 9 and not claim 10, claim 12 was amended to depend upon claim 1 as amended. No new matter was added. Claim 1 has been amended without prejudice for purposes of expediting prosecution only. Applicant reserves the right to prosecute these claims in a continuation or divisional application. Applicant requests withdrawal of the rejection and asserts that claim 1, as amended, and dependent claims 2-8 and 13-15 and new claims 17-27 are in condition for allowance.

Conclusion

Based on at least the above, Applicant respectfully submits that this application is in condition for allowance. Favorable consideration and prompt allowance of claims 2-8, 13-15 and 17-27 is requested.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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